

10/031,351

REMARKS

Upon receipt of this response, and further to the telephone discussion of June 20, 2003 between the Examiner and the undersigned representative of the Applicant, the Examiner is respectfully requested to contact the undersigned representative of the Applicant to arrange a telephone interview concerning the inventive merits of this application.

Accompanying this response, please find a substitute specification which overcomes the informalities noted in the official action. The undersigned avers that the enclosed substitute specification does not contain any new matter.

Two new figures are entered, per the attached Submission, to overcome the lack of a drawings in this case. New formal drawings, incorporating the requested amendments, will follow once the requested drawing amendments are approved by the Examiner. If any further amendment to the drawings of this application is believed necessary, the Examiner is invited to contact the undersigned representative of the Applicant to discuss the same.

The above newly entered/amended paragraphs and drawings of the specification overcome some informalities noted in the specification on file. The undersigned avers that the newly entered/amended paragraphs of the specification do not contain any new subject matter.

Claims 15-27 are rejected, under 35 U.S.C. § 103(a), as being unpatentable over McKenzie et al.'979 in view of Gierer '948. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

As the Examiner is aware, in order to properly combine the references to support an obviousness rejection under 35 U.S.C. § 103(a), the cited references must provide some disclosure, teaching or suggestion that would lead one of ordinary skill in the art to combine the references as applied by the Examiner. The Applicant has previously addressed this issue in the previous response of February 5, 2003 at pages 4-6 asserting that the references are not combinable. For the sake of brevity, those arguments are hereby incorporated by reference.

Now, further to the above argument, even if the two references are combinable, and such is again not conceded by the Applicant, a combination of McKenzie et al. '979 and Gierer '948 still fails to disclose, teach or even suggest the specifically claimed steps of the present invention. Firstly, referring to the Examiner's paragraph 5 of the latest official action and with respect to both Applicant's claims 15 and 16, the Applicant does not agree that Gierer '948 discloses an output shaft and the transmission being connected with a stationary torque transmitting hub in Fig. 1.

Observing Fig. 1 of Gierer '948, an output shaft 5 from the transmission 4 extends to block 6 which is, as set forth at column 2, lines 39-41, ".....a torque indicator 6 which measures the transmission output M out, is a component part of the transmission output shaft 5". In addition to the lack of a separate stationary torque measuring hub, Gierer '948 also lacks the specific step of blocking, or jamming, i.e., locking up, the output shaft. As can be readily ascertained by a person of skill in the art, this step in the Applicant's claimed invention is due in fact to the connection of the output shaft 7 to the stationary torque measuring hub 5 of the present invention. In fact, Gierer '948 explicitly discloses that "the speed n_{AB} of the transmission output shaft is detected as an added measured value thereof". Thus, the output shaft of Gierer '948 is in fact rotating and is not blocked or jammed as specifically recited in the presently claimed invention.

In order to further clarify these differences, the Applicant has slightly amended claim 15 to more clearly recite the steps of ".....connecting an output shaft of the transmission with a stationary torque-measuring hub and blocking the output shaft.....". The Applicant believes this paragraph clearly recites the necessary features of the present invention, which are not disclosed, taught or suggested by either Gierer '948 or McKenzie et al. '979, either alone or in combination. In addition the Applicant has also slightly amended claim 22 to include the further clarifying feature of the present invention namely, ".....connecting an output shaft of the transmission with a separate stationary torque-measuring hub and blocking the output shaft.....". The Applicant adamantly contends that at least these steps and features of

claims 15 and 22 are not obvious in view of the combination of Gierer and McKenzie as set forth in the final official action by the Examiner.

As best the Applicant understands the Examiner's Response to Arguments at section 6 of the official action, the Applicant notes that all of the specific features upon which the Applicant relies are explicitly recited in the rejected claims. The above argument relates to the expressly recited steps noted above, in particular, are recited at least in claims 15 and 22. above. In order to be fully responsive however, the Applicant has amended both claims 15 and 22 to recite "A calibration method....." as discussed throughout the specification.

Regarding section 7 of the official action, the Applicant is well aware that one cannot show nonobviousness by attacking references individually. The Applicant points out that the previous argument specifically refuted the Examiner's combination of the two cited references. The Applicant reiterates that these references either alone or in any combination still fail to disclose the specific steps as recited in the pending claims.

In view thereof, whether in combination with Grier '948 or any other reference, it is important to note that it is a fact in McKenzie et al. '979 not to have the necessity to install a separate stationary torque-transmitting hub between the transmission output shaft and a fixed part of the test bench. Thus, McKenzie et al. '979 teaches to drive the transmission test cycle to a reference point with constant engine speed and a well known reference engine torque and to measure the engine input torque at said reference point. There is no teaching or suggestion that would lead someone of skill in the art to install an additional torque-transmitting hub located at the transmission output shaft. McKenzie even teaches a transmission testing procedure which spares such an additional test bench part the result of which actually teaches away from any such combination with Grier '948.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

10/031,351

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejections should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejections or applicability of the McKenzie et al. '979 and/or Gierer '948 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

10/031,351

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



Scott A. Daniels, Reg. No. 42,462

Customer No. 020210

Davis & Bujold, P.L.L.C.

Fourth Floor

500 North Commercial Street

Manchester NH 03101-1151

Telephone 603-624-9220

Facsimile 603-624-9229

E-mail: patent@davisandbujold.com

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service, with sufficient postage, as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231 on June 23, 2003.

By: _____



Print Name: Scott A. Daniels